

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE


OFFICE OF THE SECRETARY
OFFICE OF THE GENERAL COUNSEL
Health Care Financing & Human
Development Services Division

TO : Marjorie H. Kirkland
Senior Program Specialist

DATE:

DEC 21 1978

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FROM : Robert A. Dublin 
Attorney

SUBJECT: Identification of the New Developmental Disabilities Act

In your November 29, 1978 memorandum you raised four specific questions concerning the impact of the Rehabilitation Amendments of 1978 upon the Developmental Disabilities Act. We shall answer them in order.

1. Your first question is whether or not it is correct to say that the Developmental Disabilities Act is now a part of the Rehabilitation Act. The answer is that such a view is incorrect. The fact that title V of the amendments to the Vocational Rehabilitation Services Act of 1978 amended the statutes governing the Developmental Disabilities program does not make the Developmental Disabilities Act a part of the Vocational Rehabilitation Services Act, any more than amendment to the Internal Revenue Code in the Social Security Act makes the Internal Revenue Code a part of the Social Security Act.

2. Your second inquiry concerns how the Act should be cited. Section 502 of the 1978 amendments amends section 100 of the Developmental Disabilities Act and states that it may be cited as "the Developmental Disabilities Assistance and Bill of Rights Act." This is essentially the same popular name as appeared in P.L. 94-103. With respect to citations to the United States Code those remain the same. The Developmental Disabilities legislation begins at 42 U.S.C. section 6001 and continues on for numerous other sections. These amendments will result in changes to some of the sections found in the United States Code and some deletions. However, there is essentially no change in the codification of the Developmental Disabilities legislation. As to when the corrections will appear in the Code that is something which we have no way of knowing.

Other 2 answers not included.

Position Paper

Subject : Section 515 - Payments under Title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act must begin on and after October 1, 1978.

Issue : The way the above statement reads, it would appear that RSA must implement the DD Amendments as stated in the Act regardless of the continuing resolution authorization level.

Discussion: If the above issue is the case, the following situations prevail:

I. Protection and Advocacy (P&A)

Under the P&A authorization (Sec. 500 of the amendments), no State (other than Guam, the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) shall be allotted an amount which is less than the greater of \$50,000 or the amount of the allotment to the State for the previous year. Please note Sec. 508(b)(3)(B). If this takes care of an appropriation which is less than the amount needed to provide the specified minima and the hold harmless clause, do the territories named receive the same proportion of the \$20,000 minimum allotment they received in '78.

If this is not the case, the above stated territories would receive (in lieu of any supplemental appropriation) allotments so small that they would, in all likelihood, choose not to participate in the P&A program and would, by this action, have to drop from the basic dd formula grant program as well.

II. Basic State Formula Grant Program

Under the basic State grant authorization, Sec. 510 of the amendments, allotments to American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands may not be less than \$100,000 and any other State may not be less than the greater of \$250,000, or the amount of the allotment received by the State for the fiscal year ending September 30, 1978.

If State reallocations are made to the States based on the above requirements and from an appropriation of \$30,085,000, some States will probably sue: either the